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 File No.: 126562

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Josh Withers,

Plaintiff,

v.

Trademark Event Productions,
 Inc.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Josh Withers (“*Plaintiff*”), by and through his undersigned counsel, for his Complaint against defendant Trademark Event Productions, Inc. (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §501.

2. Plaintiff created a photograph of a crowd in front of a performance stage at a festival (the “*Photograph*”) in which Plaintiff owns the rights and licenses

1 for various uses including online and print publications.

2 3. Defendant is an event planning company which owns and operates a
3 website at domain wearetrademark.com (the “Website”).

4 4. Defendant, without permission or authorization from Plaintiff, actively
5 copied and/or displayed the Photograph on the Website and engaged in this
6 misconduct knowingly and in violation of the United States copyright laws.

7 **PARTIES**

8 5. Plaintiff Josh Withers is an individual who is a citizen of the State of
9 California and resides in Ventura County, California.

10 6. Upon information and belief, Defendant Trademark Event Productions,
11 Inc., is a California corporation with a principal place of business at 321 Potrero
12 Avenue, San Francisco in San Francisco County, California.

13 **JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction over the federal copyright
15 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

16 8. This Court has personal jurisdiction over Defendant because it
17 maintains its principal place of business in California.

18 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
19 business in this Judicial District and/or because a substantial part of the events or
20 omissions giving rise to the claim occurred in this Judicial District.

21 **FACTS COMMON TO ALL CLAIMS**

22 **A. Plaintiff's Copyright Ownership**

23 10. Plaintiff is a professional photographer by trade who is the legal and
24 rightful owner of certain photographs which Plaintiff commercially licenses.

25 11. Plaintiff has invested significant time and money in building Plaintiff's
26 photograph portfolio.

27 12. Plaintiff has obtained active and valid copyright registrations from the
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United States Copyright Office (the “USCO”) which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. On October 14, 2018, Plaintiff first published the Photograph. A copy of the Photograph is attached hereto as Exhibit 1.

15. In creating the Photograph, Plaintiff personally selected the subject matter, timing, lighting, angle, perspective, depth, lens and camera equipment used to capture the image.

16. On January 11, 2019, the Photograph was registered by the USCO under Registration No. VA 2-134-081.

17. Plaintiff created the Photograph with the intention of it being used commercially and for the purpose of display and/or public distribution.

B. Defendant's Infringing Activity

18. Defendant is the registered owner of the Website and is responsible for its content.

19. Defendant is the operator of the Website and is responsible for its content.

20. The Website is a key component of Defendant's popular and lucrative commercial enterprise.

21. The Website is monetized in that sells its services to the public and, upon information and belief, Defendant profits from these activities.

22. On or about August 12, 2019, Defendant displayed the Photograph on the Website as part of an on-line story at URL <https://wearetrademark.com/blog/page/3/>. A copy of a screengrab of the Website including the Photograph is attached hereto as Exhibit 2.

23. The Photograph was stored at URL:

1 [https://391398.smushcdn.com/2705709/wp-](https://391398.smushcdn.com/2705709/wp-content/uploads/2022/02/18d9e556ec1cc59dc8ab263b1c8995c180a09d96-1000x265-1.jpg?lossy=1&strip=1&webp=1)
2 [content/uploads/2022/02/18d9e556ec1cc59dc8ab263b1c8995c180a09d96-](https://391398.smushcdn.com/2705709/wp-content/uploads/2022/02/18d9e556ec1cc59dc8ab263b1c8995c180a09d96-1000x265-1.jpg?lossy=1&strip=1&webp=1)
3 [1000x265-1.jpg?lossy=1&strip=1&webp=1](https://391398.smushcdn.com/2705709/wp-content/uploads/2022/02/18d9e556ec1cc59dc8ab263b1c8995c180a09d96-1000x265-1.jpg?lossy=1&strip=1&webp=1).

4 24. Without permission or authorization from Plaintiff, Defendant
5 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
6 the Website.

7 25. Plaintiff first observed and actually discovered this infringement on
8 April 3, 2022.

9 26. Upon information and belief, the Photograph was copied and displayed
10 by Defendant without license or permission, thereby infringing on Plaintiff's
11 copyrights in and to the Photograph (hereinafter the unauthorized use set forth above
12 is referred to as the "*Infringement*").

13 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a
14 fixed tangible medium of expression that was sufficiently permanent or stable to
15 permit it to be communicated for a period of more than a transitory duration and
16 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

17 28. The Infringement is an exact copy of Plaintiff's original image that was
18 directly copied and displayed by Defendant on the Website.

19 29. Upon information and belief, Defendant takes an active and pervasive
20 role in the content posted on its Website, including, but not limited to copying,
21 posting, selecting, commenting on and/or displaying images including but not
22 limited to Plaintiff's Photograph.

23 30. Upon information and belief, the Photograph was willfully and
24 volitionally posted to the Website by Defendant.

25 31. Upon information and belief, Defendant was aware of facts or
26 circumstances from which the determination regarding the Infringement was
27 apparent. Defendant cannot claim that it was not aware of the infringing activities,
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1 including the specific Infringement which form the basis of this complaint, since
2 such a claim would amount to only willful blindness to the Infringement on the part
3 of Defendant.

4 32. Upon information and belief, Defendant engaged in the Infringement
5 knowingly and in violation of applicable United States copyright laws.

6 33. Upon information and belief, Defendant has the legal right and ability
7 to control and limit the infringing activities on its Website and exercised and/or had
8 the right and ability to exercise such right.

9 34. Upon information and belief, Defendant monitors the content on its
10 Website.

11 35. Upon information and belief, Defendant has received a financial benefit
12 directly attributable to the Infringement.

13 36. Upon information and belief, the Infringement increased traffic to the
14 Website and, in turn, caused Defendant to realize an increase its sales.

15 37. Upon information and belief, a large number of people have viewed the
16 unlawful copies of the Photograph on the Website.

17 38. Upon information and belief, Defendant at all times had the ability to
18 stop the reproduction and display of Plaintiff's copyrighted material.

19 39. Plaintiff created the Photograph with the intention of it being used
20 commercially and for the purpose of display and/or public distribution.

21 40. Defendant's use of the Photograph harmed the actual market for the
22 Photograph.

23 41. Defendant's use of the Photograph, if widespread, would harm
24 Plaintiff's potential market for the Photograph.

25 42. As a result of Defendant's misconduct, Plaintiff has been substantially
26 harmed.

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FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

43. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

44. The Photograph is an original, creative work in which Plaintiff owns a valid copyright.

45. The Photograph is properly registered with the USCO and Plaintiff has complied with all statutory formalities under the Copyright Act and under regulations published by the USCO.

46. Plaintiff has not granted Defendant a license or the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyright to Defendant.

47. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

48. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement.

49. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that Defendant used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, Plaintiff's original and unique Photograph without Plaintiff's consent or authority, by using it on the Website.

50. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504

1 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
2 statutory damages against each Defendant for each infringement pursuant to 17
3 U.S.C. § 504(c).

4 51. As a result of the Defendant's violations of Title 17 of the U.S. Code,
5 the court in its discretion may allow the recovery of full costs as well as reasonable
6 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

7 52. As a result of Defendant's violations of Title 17 of the U.S. Code,
8 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
9 copyright pursuant to 17 U.S.C. § 502.

10 **JURY DEMAND**

11 53. Plaintiff hereby demands a trial of this action by jury.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

14 That the Court enters a judgment finding that Defendant has infringed on
15 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* therefore
16 award damages and monetary relief as follows:

- 17 a. finding that Defendant infringed Plaintiff's copyright interest in
18 and to the Photograph by copying and displaying it without a
19 license or consent;
- 20 b. for an award of actual damages and disgorgement of all of
21 Defendant's profits attributable to the infringements as provided
22 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
23 alternative, at Plaintiff's election, an award for statutory damages
24 against each Defendant for each infringement pursuant to 17
25 U.S.C. § 504(c), whichever is larger;
- 26 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
27 from any infringing use of any of Plaintiff's works;
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- 1 d. for costs of litigation and reasonable attorney's fees against
2 Defendant pursuant to 17 U.S.C. § 505;
3 e. for pre-judgment interest as permitted by law; and
4 f. for any other relief the Court deems just and proper.
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6 DATED: August 22, 2023

7 **SANDERS LAW GROUP**

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